

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA
Plaintiff,

v.

City of Hastings
Concrete Industries, Inc.
Cooperative Producers, Inc.
Desco Corporation
Dravo Corporation
Dutton Lainson Company
Morrison Enterprises

Defendants.

CIVIL ACTION NO. _____

**HASTINGS GROUND WATER CONTAMINATION SITE
CONSENT DECREE FOR AREA-WIDE OPERABLE UNIT 19
INTERIM REMEDIAL ACTION**

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of certain costs incurred by EPA and the Department of Justice for response actions at or in connection with the Area-Wide Operable Unit 19 of the Hastings Ground Water Contamination Superfund Site ("Site") in Hastings, Nebraska, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Nebraska (the "State") on July 3, 2001, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior on July 3, 2001, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes a violation of any State or Federal law or an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agency does not admit any liability arising out of any transactions or occurrences that may be alleged in any counterclaim asserted by Settling Defendants.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Hastings Ground Water Contamination Site ("Site") on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, pursuant to 40 C.F.R. § 300.430, EPA commenced a Remedial Investigation in 1985.

H. Based on information obtained from the Remedial Investigation and other historical information, EPA identified seven separate subsites as sources of contamination at the Site. EPA labeled each source with a subsite name. The seven subsites are referred to as the Well #3, North

Landfill, South Landfill, Second Street, FAR-MAR-CO, Colorado Avenue, and Naval Ammunition Depot ("NAD").

I. EPA conducted the Remedial Investigation at the Site in three phases. The first phase occurred in 1985-86 and identified major soil contaminant sources at the FAR-MAR-CO and Colorado Avenue Subsites. The second phase occurred between 1987 and 1989 and identified sources of ground water contamination at Colorado Avenue, Second Street, Well #3, North Landfill, and FAR-MAR-CO Subsites. The third phase of the Remedial Investigation occurred in 1990-95 and focused on ground water contamination at the Site. The Area-Wide Remedial Investigation ("RI") Report of December, 1996 summarizes the first two phases of the RI and the third phase that was undertaken between 1990-95. The Settling Defendants completed an Area-Wide Feasibility Study ("FS") Report in April 2000, and FS Addendum in November, 2000.

J. During the implementation of the RI, EPA further divided the subsites into twenty operable units to address soil and ground water contamination. The EPA is addressing principal threats posed by the subsite contamination to contain the ground water contamination at a risk level that is equivalent to at least 1×10^{-4} or an increased cancer rate of one in 10,000. The EPA designated "Area-Wide Operable Unit 19" ("Area-Wide OU 19") to address the residual ground water contamination emanating from the six subsites, excluding the NAD.

K. Excluding the requirement for Record Preservation, the Work required under Administrative Order on Consent, EPA Docket No. VII-98-F-0022, October 23, 1998, providing, among other things, for performance of an FS for Area-Wide OU19, has been completed.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 10, 2001, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

M. The decision by EPA on an Interim Remedial Action to be implemented for Area-Wide OU 19 is embodied in a Record of Decision ("ROD") for an Interim Remedial Action, executed on June 25, 2001, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the Interim Remedial Action plan was published in accordance with Section 117(b) of CERCLA.

N. The City of Hastings enacted an ordinance in November, 2000 which became effective on January 1, 2001. The ordinance established an institutional control area ("ICA") encompassing an area where ground water contamination migrated from the subsites. The ordinance regulates domestic well activities in the ICA and requires registering, inspecting, and sampling of wells, proper closing of abandoned wells, permitting for new wells, and warning signs. The ordinance requires an owner of a domestic well showing contamination to connect to the public water supply system or to obtain point of use treatment. The Interim Remedial Action

for Area-Wide OU 19 requires, among other things, the Work Parties, as defined in Section IV (DEFINITIONS) herein, to implement a comprehensive ground water monitoring program within the ICA and to provide an alternate water supply to those domestic users whose drinking water is contaminated at levels that exceed Health-Based Levels, as defined in Section IV (DEFINITIONS) herein.

O. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Work Parties if conducted in accordance with the requirements of this Consent Decree and its appendices.

P. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Work Parties shall constitute a response action taken or ordered by the President.

Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in the organization, management, government, ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. The Work Parties shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Work Parties with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Work Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this

Consent Decree. The Work Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Work Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Area-Wide OU 19” shall mean Residual Ground Water Contamination emanating from all the subsites, except the NAD.

“Cash-Out Parties” shall mean Settling Defendants Dravo Corporation and Desco Corporation.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Contaminants of Concern” or “COCs” shall mean the contaminants identified in Table 4 of the Interim Action Record of Decision for Area-Wide OU 19, signed on June 24, 2001 and also set forth in Table 4 of the Statement of Work, Appendix B of this Consent Decree.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 105.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Response Costs” shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or

otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 86 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

“Hastings Ground Water Contamination Site Special Account” shall mean the special account to be established at the Site by the EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

“Health-Based Levels” shall mean the maximum contaminant levels (as defined under the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*), the 1×10^{-6} cancer risk level, or the lifetime health advisory level for the Contaminants of Concern, as set forth in Table 4 of the Statement of Work, attached to and incorporated into this Consent Decree as Appendix B.

“Institutional Control Area” or “ICA” shall mean the area in and around Hastings, Nebraska and specifically within the boundaries beginning at the intersection of 12th Street and Crane Avenue in Hastings; thence East on 12th Street to Maxon Avenue; thence South on Maxon Avenue to J Street; thence West on J Street to Crane Avenue extended; thence North on Crane Avenue extended to the point of beginning.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Interim Response Costs” shall mean all costs, not inconsistent with the NCP, including direct and indirect costs, (a) paid by the United States on behalf of EPA between October 1, 2001 and the Lodging Date and on behalf of DOJ between July 1, 2002 and the Lodging Date, at or in connection with the Area-Wide OU 19, or (b) incurred prior to the Lodging Date but paid after that date. Such costs shall exclude any costs incurred by the United States between the Lodging Date and the Effective Date at or in connection with the Area-Wide OU 19.

“Lodging Date” shall mean the date that the United States lodges this Consent Decree with the Court.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“NDEQ” shall mean the Nebraska Department of Environmental Quality and any successor departments or agencies of the State.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Past Response Costs” shall mean those costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs that the United States paid on behalf of EPA through September 30, 2001 at or in connection with the Area-Wide OU 19, as set forth in the Cost Summary/SCORPIOS Report for OU00 and OU19, attached hereto as Appendix C, and costs of \$8904 incurred on behalf of DOJ through June 30, 2002, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such dates.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the Interim Action Record of Decision relating to the Area-Wide Ground Water Action at the Site, Operable Unit 19, signed on June 24, 2001, by the Acting Regional Administrator, EPA Region VII, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” or “Interim Remedial Action” shall mean those activities to be undertaken by the Work Parties to implement the ROD objectives, in accordance with the Statement of Work and the final Remedial Design/Remedial Action Work Plan.

“Remedial Design” shall mean those activities to be undertaken by the Work Parties to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design/Remedial Action Work Plan.

“Remedial Design/Remedial Action Work Plan” or “RD/RA Work Plan” shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, for the design and implementation of the remedy selected in the ROD and described in Section 5 of the SOW.

“Residual Ground Water Contamination” shall mean ground water contamination that has traveled beyond the six subsites (North Landfill, Colorado Avenue, South Landfill, FAR-MAR-CO, Well #3, and Second Street), or which remains at the six subsites after final subsite remedial action.

“SCORPIOS Report” shall mean the report generated by EPA through the Superfund Cost Recovery Package Imaging and On-Line System and attached to this Consent Decree as Appendix C.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean the Work Parties and the Cash-Out Parties as defined in this Section.

“Settling Federal Agency” shall mean the United States Department of the Navy and any successor departments or agencies, which are resolving any claims which could be asserted against them with respect to Area-Wide OU 19, as provided in this Consent Decree.

“Site” shall mean the Hastings Ground Water Contamination Superfund Site, located in and around the city of Hastings, Adams County, Nebraska, and depicted generally on the map attached as Appendix D.

“State” shall mean the State of Nebraska.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Work Parties to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation, EPA, the Settling Federal Agency, and the federal natural resources trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities the Work Parties are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

“Work Parties” shall mean Settling Defendants City of Hastings, Concrete Industries, Inc., Cooperative Producers, Inc., Dutton-Lainson Company, and Morrison Enterprises.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect the public health from exposure to ground water exceeding Health-Based Levels for the COCs as set forth in the SOW by the design and implementation of response actions by the Work Parties, to reimburse response costs of the Plaintiff, to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree, to resolve the claims of the Settling Defendants which could be asserted against the United States with regard to the Area-Wide OU 19 at this Site, as provided in this Consent Decree and to provide Settling Defendants and the Settling Federal Agency with contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), as set forth in Paragraph 93 herein.

6. Commitments by Settling Defendants and the Settling Federal Agency.

a. The Work Parties shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW and any other plans and schedules set forth herein or developed by the Work Parties and approved by EPA pursuant to this Consent Decree. The Settling Defendants and the Settling Federal Agency shall reimburse the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of the Work Parties to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Work Parties to implement the requirements of this Consent Decree, the remaining Work Parties shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by the Work Parties pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and state laws and regulations. The Work Parties must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a Federal or state permit or approval, the Work Parties shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Work Parties may seek relief under the provisions of Section XVIII (FORCE MAJEURE) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Work Parties pursuant to Sections VI (PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS), VII (REMEDY REVIEW), VIII (QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS), and XV (EMERGENCY RESPONSE) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, the Work Parties shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be

the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, the Work Parties shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the Work Parties propose to change a Supervising Contractor, the Work Parties shall give such notice to EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Work Parties in writing. The Work Parties shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The Work Parties may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Work Parties from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, the Work Parties may seek relief under the provisions of Section XVIII (FORCE MAJEURE).

10. Remedial Design/Remedial Action.

a. Within 30 days after the later of the Effective Date of this Consent Decree or EPA's issuance of an authorization to proceed pursuant to Paragraph 9, the Work Parties shall submit to EPA and the State a work plan for the Remedial Design/Remedial Action for the Area-Wide OU 19 Interim Remedial Action ("RD/RA Work Plan" or "Work Plan"). The Work Plan shall provide for the design and implementation of the remedy set forth in the ROD, in accordance with the requirements set forth in the Consent Decree and the SOW. The Work Plan shall include the components listed in Section 5 of the SOW. Upon approval by EPA of the Work Plan, after a reasonable opportunity for review and comment by the State, the Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The Work Parties shall implement the activities and submit the deliverables required under the approved Work Plan in accordance with the schedule set forth in this Consent Decree and the SOW. Unless otherwise directed by EPA, the Work Parties shall not commence physical activities at the Site prior to approval of the Work Plan.

11. The Work Parties shall continue to implement the Remedial Action until Health-Based Levels for the COCs as set forth in the SOW have been achieved.

12. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the Work specified in the SOW or any component of the Work Plan is necessary to achieve and maintain Health-Based Levels for COCs as set forth in the SOW and to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or the Work Plan, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 12 and Paragraph 47 only, the "scope of the remedy selected in the ROD" is the Interim Remedial Action for the Area-Wide OU 19 to protect the public from exposure to ground water exceeding Health-Based Levels for the COCs as set forth in the SOW.

c. If the Work Parties object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (DISPUTE RESOLUTION), Paragraph 69 (Record Review). The SOW and/or related plans shall be modified in accordance with final resolution of the dispute.

d. The Work Parties shall implement any Work required by any modifications incorporated in the SOW and/or in related plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree. Consistent with Section XIX (DISPUTE RESOLUTION), nothing in this Paragraph shall be construed to limit any right that the Work Parties may have to object to and defend against EPA's exercise of such authority.

f. The Work Parties shall submit to the EPA in writing for its review and approval any proposed modification or change to any plan, schedule, or remedial activity. Unless otherwise directed by the EPA, the Work Parties shall not implement any such modification until they receive written EPA approval.

13. The Work Parties acknowledge and agree that nothing in this Consent Decree, the SOW, or the Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the related plans will protect the public from exposure to ground water exceeding the Health-Based Levels for the COCs as set forth in the SOW.

14. a. The Work Parties shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall

not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Work Parties shall include in the written notification required by Paragraph 14.a., the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Work Parties shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Work Parties following the award of the contract for Remedial Action construction. The Work Parties shall provide the information required by Paragraph 14.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, the Work Parties shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. The Work Parties shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

15. Periodic Review. Work Parties shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

16. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protecting the public from exposure to ground water exceeding Health-Based Levels for the COCs as set forth in the SOW, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. Opportunity To Comment. Work Parties and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. The Work Parties' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Area-Wide OU 19, the Work Parties shall undertake such further response actions to protect the public from exposure to ground water exceeding Health-Based Levels for the COCs as set forth in the SOW. The Work Parties may invoke the procedures set forth in Section XIX (DISPUTE RESOLUTION) to (1) dispute EPA's determination that the Remedial Action is not protective of human health, or (2) EPA's selection

of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 69 (Record Review).

19. Submissions of Plans. If the Work Parties are required to perform further response actions pursuant to Paragraph 18, within thirty (30) days of notice by EPA that further response actions are necessary, they shall submit a plan for such work to EPA for approval, in accordance with the procedures set forth in Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS) and the Work Parties shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

20. The Work Parties shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to the Work Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Work Parties shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Work Parties shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Work Parties in implementing this Consent Decree. In addition, the Work Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Work Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Work Parties may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. The Work Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Work Parties shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA

may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. The Work Parties shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

21. Upon request, the Work Parties shall allow split or duplicate samples to be taken by EPA or their authorized representatives. The Work Parties shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Work Parties to take split or duplicate samples of any samples EPA takes as part of the Plaintiff's oversight of the Work Parties' implementation of the Work.

22. The Work Parties shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Work Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

23. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS

24. If the Site, or any other property where access is needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 86 of this Consent Decree;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Work Parties or their agents, consistent with Section XXIV (ACCESS TO INFORMATION);

(9) Assessing the Work Parties' compliance with this Consent Decree;
and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Interim Remedial Action to be performed pursuant to this Consent Decree..

25. If the Site, or any other property where access is needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, the Work Parties shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the Work Parties as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24 of this Consent Decree.

b. an agreement, enforceable by the Work Parties and the United States, to refrain from using the Site, or any other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

c. if EPA so requests, the execution and recordation in the Adams County Registry of Deeds of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the Interim Remedial Action. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Work Parties and their representatives, and (iv) other appropriate grantees. Within 45 days of EPA's request that this easement be executed and recorded, Work Parties shall submit to EPA for review and approval with respect to such property:

(1) a draft easement that is enforceable under the laws of the State of Nebraska, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, the Work Parties shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Adams County Registry of Deeds. Within 30 days of recording the easement, Work Parties shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

26. For purposes of Paragraph 25 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access. If the Work Parties are unable to obtain access within 45 days of the date of request by EPA, the Work Parties shall promptly notify the United States and shall include in the notification a summary of steps taken to obtain access. The United States may, as it deems appropriate, assist the Work Parties in obtaining access. The Work Parties shall reimburse the United States in accordance with the procedures in Section XVI (REIMBURSEMENT OF RESPONSE COSTS), for all costs incurred, direct or indirect, by the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

27. The Work Parties shall cooperate with the City of Hastings in implementation of City Ordinance 3754 (Attachment 3 to Appendix B, SOW).

28. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

29. a. In addition to any other requirement of this Consent Decree, the Work Parties shall submit to EPA and the State written annual reports that: (i) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous reporting period, including, but not limited to, data collection and implementation of the Work Plan; (ii) summarize results of all sampling and other data received or generated by the Work Parties or their contractors or agents in the previous reporting period; (iii) describe all actions, including,

but not limited to, data collection and implementation of Work Plan, which are scheduled during next reporting period; (iv) provide information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (v) include any modifications to the plans or other schedules that the Work Parties have proposed to EPA or that have been approved by EPA. The Work Parties shall submit the annual reports to EPA and the State beginning on the first day of the thirteenth month following the lodging of this Consent Decree until EPA notifies the Work Parties pursuant to Paragraph 47 of Section XIV (CERTIFICATION OF COMPLETION). If requested by EPA, the Work Parties shall also provide briefings for EPA to discuss the progress of the Work annually until termination of obligations under this Consent Decree.

b. The Work Parties shall notify EPA of any change in the schedule in the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

30. Upon the occurrence of any event during performance of the Work that the Work Parties are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Work Parties shall, within 24 hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region VII, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

31. Within 20 days after the onset of such an event referenced in Paragraph 30 above, the Work Parties shall furnish to Plaintiff a written report, signed by the Work Parties' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, the Work Parties shall submit a report setting forth all actions taken in response thereto.

32. The Work Parties shall submit one copy of the RD/RA Work Plan and all reports and data required by the SOW to EPA and one copy of the same to the State in accordance with the schedules set forth in the SOW and this Consent Decree. Upon request by EPA, the Work Parties shall submit in electronic form all portions of any report or other deliverable the Work Parties are required to submit pursuant to the provisions of this Consent Decree.

33. All reports and other documents submitted by the Work Parties to EPA which purport to document the Work Parties' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Work Parties.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

34. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and

comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Work Parties modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Work Parties at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34(a), (b), or (c), the Work Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (DISPUTE RESOLUTION) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 34(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (STIPULATED PENALTIES).

36. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 34(d), the Work Parties shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 37 and 38.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), the Work Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Work Parties of any liability for stipulated penalties under Section XX (STIPULATED PENALTIES).

37. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Work Parties to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. the Work Parties shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (DISPUTE RESOLUTION).

38. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Work Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Work Parties invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION) and EPA's action is overturned

pursuant to that Section. The provisions of Section XIX (DISPUTE RESOLUTION) and Section XX (STIPULATED PENALTIES) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

40. The Work Parties have identified David Wacker as their Project Coordinator and Marty Stange as their Alternate Project Coordinator. EPA has identified Paul Doherty as its Project Coordinator and Diane Easley as its Alternate Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Work Parties' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Any successor Project Coordinator identified by the Work Parties' Project Coordinator shall not be an attorney for any of the Work Parties in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

42. EPA's Project Coordinator and Work Parties' Project Coordinator will confer on a regular, scheduled basis as set forth in the RD/RA Work Plan.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

43. Within 30 days of entry of this Consent Decree, the Work Parties shall establish and maintain financial security in the amount of \$600,000 in one or more of the following forms:

- a. A surety bond or insurance guaranteeing performance of the Work, that meets the requirements of 40 C.F.R. § 264.143;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Work Parties;
- e. A demonstration that one or more of the Work Parties satisfy the requirements of 40 C.F.R. Part 264.143(f).

44. If the Work Parties seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 43 of this Consent Decree, the Work Parties shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Work Parties seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 43, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Work Parties shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 43 of this Consent Decree. The Work Parties' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

45. If the Work Parties can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 43 above after entry of this Consent Decree, the Work Parties may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. The Work Parties shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, the Work Parties may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

46. The Work Parties may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Work Parties may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

47. Completion of the Work.

a. Within 90 days after the Work Parties conclude that all phases of the Work have been fully performed and that the Health-Based Levels for the COCs as set forth in the SOW have been achieved, the Work Parties shall schedule and conduct a pre-certification inspection to be attended by the Work Parties and EPA. If, after the pre-certification inspection, the Work Parties still believe that the Work has been fully performed, the Work Parties shall submit a written report consistent with Section 6.2 of the SOW by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of the Work Parties or the Work Parties' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State determines that any portion of the Work has not been completed in accordance with this Consent Decree, or that the Health-Based Levels for the COCs as set forth in the SOW have not been achieved, EPA will notify the Work Parties in writing of the activities that must be undertaken by the Work Parties pursuant to this Consent Decree to complete the Work, and to achieve Health-Based Levels for the COCs as set forth in the SOW, provided, however, that EPA may only require the Work Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Work Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS). The Work Parties shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by the Work Parties and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree and that the Health-Based Levels for the COCs as set forth in the SOW have been achieved, EPA will so notify the Work Parties in writing. This certification shall constitute the Certification of Completion of the Work for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Work shall not affect Work Parties' obligations under this Consent Decree.

XV. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Work Parties shall, subject to Paragraph 49, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Work Parties shall notify the EPA Emergency Response Unit, Region VII. The Work Parties shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan and any other applicable plans or documents developed pursuant to the SOW. In the event that the Work Parties fail to take appropriate response action as required by this Section, and EPA takes such action instead, the Work Parties shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (PAYMENTS FOR RESPONSE COSTS).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (COVENANTS NOT TO SUE BY PLAINTIFFS).

XVI. PAYMENTS FOR RESPONSE COSTS

50. Payments by Work Parties for Past Response Costs

a. Within 45 days of the Effective Date, the Work Parties shall pay to EPA \$1,195,000 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number 07/S2, and DOJ Case Number 90-11-2-1112/2. Payment shall be made in accordance with instructions provided to the Work Parties by the Financial Litigation Unit of the United States Attorney's Office for the District of Nebraska following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, the Work Parties shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (NOTICES AND SUBMISSIONS).

c. The total amount to be paid by the Work Parties pursuant to Paragraph 50.a. shall be deposited in the Hastings Ground Water Contamination Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response

actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

51. Payments by Work Parties for Future Response Costs

a. The Work Parties shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan, except that with respect to Interim Response Costs the Work Parties shall pay 65.8 % of said costs. On a periodic basis, the United States will send the Work Parties a bill requiring payment that includes a Cost Summary/SCORPIOS Report. The Work Parties shall make all payments within 45 days of the Work Parties' receipt of each bill requiring payment, except as otherwise provided in Paragraph 52. The Work Parties shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 07/S2, and DOJ Case Number 90-11-2-1112/2. The Work Parties shall send the check(s) to:

EPA Hazardous Substance Superfund
EPA, Region VII
P.O. Box 360748M
Pittsburgh, PA 15251

b. At the time of payment, the Work Parties shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (NOTICES AND SUBMISSIONS).

c. Future Response Costs shall be deposited in the Hastings Ground Water Contamination Special Account within the EPA Hazardous Substance Superfund and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

52. The Work Parties may contest payment of any Future Response Costs under Paragraph 51 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA Regional Financial Management Officer pursuant to Section XXVI (NOTICES AND SUBMISSIONS). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Work Parties shall, within the 30 day period, pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 51. Simultaneously, the Work Parties shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Nebraska and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Work Parties shall send to the EPA Project Coordinator and Regional Financial Management Officer, as provided in Section XXVI (NOTICES AND SUBMISSIONS), a copy of the

transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Work Parties shall initiate the Dispute Resolution procedures in Section XIX (DISPUTE RESOLUTION). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Work Parties shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 51. If the Work Parties prevail concerning any aspect of the contested costs, the Work Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 51; the Work Parties shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (DISPUTE RESOLUTION) shall be the exclusive mechanisms for resolving disputes regarding the Work Parties obligation to reimburse the United States for its Future Response Costs.

53. In the event that the payments required by Paragraph 50.a. are not made within 45 days of the Effective Date or the payments required by Paragraph 51 are not made within 45 days of the Work Parties' receipt of the bill, the Work Parties shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of receipt of the bill. The Interest shall accrue through the date of the Work Parties' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the Work Parties failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX. The Work Parties shall make all payments required by this Paragraph in the manner described in Paragraph 51.

54. Payment by the Cash-Out Parties

a. Within 45 days of the Effective Date, the Cash-Out Parties shall pay to EPA \$850,000 in payment for Past Response Costs, which costs include a premium. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number 07/S2, and DOJ Case Number 90-11-2-1112/2. Payment shall be made in accordance with instructions provided to the Cash-Out Parties by the Financial Litigation Unit of the United States Attorney's Office for the District of Nebraska following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. The United States will send the Cash-Out Parties a bill requiring payment of Interim Response Costs that includes a Cost Summary/SCORPIOS Report. The Cash-Out Parties shall pay to EPA 28.2% of these costs within 45 days of the Cash-Out Parties' receipt of the bill requiring payment, except as otherwise provided in Paragraph 52. The Cash-Out Parties

shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 07/S2, and DOJ Case Number 90-11-2-1112/2. The Cash-Out Parties shall send the check(s) to the address set forth in Paragraph 51. The Cash-Out Parties may contest payment of their 28.2% share of Interim Response Costs if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP by following the procedures set forth for the Work Parties in Paragraph 52.

c. At the time of each payment, the Cash-Out Parties shall send notice that payment has been made to the United States, to the EPA Project Coordinator and to the Regional Financial Management Officer, in accordance with Section XXVI (NOTICES AND SUBMISSIONS).

d. The total amount to be paid by the Cash-Out Parties pursuant to Paragraph 54.a. and b. shall be deposited in the Hastings Ground Water Contamination Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

55. In the event that the payment required by Paragraph 54.a. is not made within 45 days of the Effective Date, Cash-Out Parties shall pay Interest on the unpaid balance. The Interest to be paid under this Paragraph shall begin to accrue on the Effective Date and shall accrue through the date of the payment. In the event that the payment required by Paragraph 54.b. is not made within 45 days of receipt of the bill for Interim Response Costs, Cash-Out Parties shall pay Interest on the unpaid balance. The Interest to be paid on Interim Response Costs shall begin to accrue 45 days after receipt by Cash-Out Parties of the bill for Interim Response Costs. Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the Cash-Out Parties' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX.

56. Payments by the Settling Federal Agency:

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of the Settling Federal Agency, shall pay to the EPA Hazardous Substance Superfund \$205,000, in reimbursement of Past Response Costs, which payment includes a premium. As soon as reasonably practicable after the receipt by the Settling Federal Agency of a bill requiring payment of Interim Response Costs that includes a Cost Summary/SCORPIOS Report, Settling Federal Agency shall pay 6% of the Interim Response Costs to the EPA Hazardous Substance Superfund.

b. If the Past Response Cost payment required by Paragraph 56.a. is not made as soon as reasonably practicable after the Effective Date, or the Interim Response Cost Payment required by Paragraph 56.a. is not made as soon as reasonably practicable after receipt of a bill, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the

appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if payment of Past Response Costs is not made within 120 days after the Effective Date of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement.

c. At the time of each payment, the Settling Federal Agency shall send notice that payment has been made to the United States, to the EPA Project Coordinator and to the Regional Financial Management Officer, in accordance with Section XXVI (NOTICES AND SUBMISSIONS)

d. Payments by the Settling Federal Agency shall be deposited in the Hastings Ground Water Contamination Special Account within the EPA Hazardous Substance Superfund and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund

57. In the event that the Past Response Cost payment required by Paragraph 56 is not made within 121 days of the Effective Date of this Consent Decree, Interest on the amount due shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C §9607(a), commencing on the 121st day after the Effective Date and accruing through the date of the payment. In the event that the Interim Response Cost payment required by Paragraph 56 is not made within 45 days of receipt of a bill as described in Paragraph 56, Interest on the amount due shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. §9607(a), commencing on the 45th day after the date of receipt of bill and accruing through the date of the payment.

58. The Parties to the Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agency can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the United States or the Settling Federal Agency shall obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

59. The Work Parties' Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Work Parties as EPA's authorized representatives under Section 104(e) of CERCLA. The Work Parties shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agency) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Work Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Work Parties as EPA's authorized representatives under Section 104(e) of

CERCLA. Further, the Work Parties agree to pay the United States (with the exception of the Settling Federal Agency) all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the Work Parties their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the Work Parties in carrying out activities pursuant to this Consent Decree. Neither the Work Parties nor any such contractor shall be considered an agent of the United States.

b. The United States shall give the Work Parties notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 59.a., and shall consult with Work Parties prior to settling such claim.

60. The Work Parties waive all claims against the United States, with the exception of the Settling Federal Agency if the Settling Federal Agency does not make the payment required under Paragraphs 56 and 57 herein, for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of the Work Parties and any person for performance of Work on or relating to the Area-Wide OU 19, including, but not limited to, claims on account of construction delays. In addition, the Work Parties shall indemnify and hold harmless the United States, with the exception of the Settling Federal Agency, if the Settling Federal Agency does not make the payment required under Paragraphs 56 and 57 herein, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Work Parties and any person for performance of Work on or relating to Area-Wide OU 19, including, but not limited to, claims on account of construction delays.

61. No later than 15 days before commencing any on-site Work, the Work Parties shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47.b. of Section XIV (CERTIFICATION OF COMPLETION) comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as additional insured. In addition, for the duration of this Consent Decree, the Work Parties shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Work Parties in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Work Parties shall provide to EPA certificates of such insurance and a copy of each insurance policy. The Work Parties shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If the Work Parties demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with

respect to that contractor or subcontractor, the Work Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

62. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Work Parties of any entity controlled by the Work Parties or of the Work Parties' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Work Parties' best efforts to fulfill the obligation. The requirement that the Work Parties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work or failure to achieve Health-Based Levels for the COCs as set forth in the SOW.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure, the Work Parties shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region VII, within 48 hours of when the Work Parties first knew that the event might cause a delay. Within 7 days thereafter, or such other time as agreed to by EPA in writing, the Work Parties shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Work Parties rationale for attributing such delay to a force majeure if they intend to assert such a claim; and a statement as to whether, in the opinion of the Work Parties, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Work Parties shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Work Parties from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Work Parties shall be deemed to know of any circumstance of which Work Parties any entity controlled by the Work Parties or the Work Parties' contractors knew or should have known.

64. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify the Work Parties in writing of its decision. If EPA agrees that the delay is attributable

to a force majeure, EPA will notify the Work Parties in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

65. If the Work Parties elect to invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Work Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Work Parties complied with the requirements of Paragraphs 62 and 63 above. If the Work Parties carry this burden, the delay at issue shall be deemed not to be a violation by the Work Parties of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

67. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

68. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, the Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 69 or Paragraph 70.

b. Within 14 days after receipt of the Work Parties' Statement of Position, EPA will serve on the Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 69 or 70. Within 7 days after receipt of EPA's Statement of Position, the Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 69 or 70, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 69 and 70.

69. Disputes That Pertain to Selection or Adequacy of Response Action Formal Dispute Resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Work Parties regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Regional Judicial Officer will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 69.a. This decision shall be binding upon the Work Parties, subject only to the right to seek judicial review pursuant to Paragraph 69.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 69.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Work Parties with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Work Parties' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Regional Judicial Officer is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 69.a.

70. Disputes That Do Not Pertain to Selection or Adequacy of Response Action Formal Dispute Resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of the Settling Defendants' Statement of Position submitted pursuant to Paragraph 68, the Regional Judicial Officer will issue a final decision resolving the dispute. The Regional Judicial Officer's decision shall be binding on the Settling Defendants unless, within 20 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Defendants' motion.

b. Notwithstanding Paragraph P of Section I (BACKGROUND) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

71. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (STIPULATED PENALTIES).

XX. STIPULATED PENALTIES

72. a. The Cash-Out Parties shall be liable for stipulated penalties for failure to comply with the requirements for reimbursement set forth in Paragraph 54 of this Consent Decree. Stipulated penalties shall accrue per violation in the amount of \$500 per day.

b. The Work Parties

(1). The Work Parties shall be liable for stipulated penalties for failure to comply with the requirements for reimbursement as set forth in Paragraphs 50 and 51. Stipulated penalties shall accrue per violation in the amount of \$500 per day.

(2). The Work Parties shall be liable for stipulated penalties for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (FORCE MAJEURE), in the amounts set forth in Paragraphs 73 and 74. "Compliance" by Work Parties shall include completion of the activities under this Consent Decree or any part of the RD/RA Work Plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

73. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance by the Work Parties identified in Subparagraph 73.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th day
\$1500	15th through 30th day
\$2000	31st day and beyond

b. Compliance Milestones.

(1) Failure to submit the Work Plan with all components required by Section 5 of the SOW timely or adequately;

(2) Failure to implement timely or adequately the Work Plan that has been approved by EPA;

(3) Failure to remit timely funds to an escrow account as required by Paragraphs 52 and 80;

(4) Failure to submit an Annual Report;

(5) Failure to submit the Completion of the Work Report as required under Paragraph 47 and Section 6.2 of the SOW; and

(6) Failure to submit the Five-Year Report in the time frame required under Section 5.5 of the SOW.

74. Stipulated Penalty Amounts - Reports, Deliverables, Notifications.

The following stipulated penalties shall accrue per violation per day for failure by the Work Parties to: i) timely notify EPA as required by this Consent Decree; ii) submit timely or adequate written documents or deliverables pursuant to Paragraphs 19, 22, 30, 31, 36, 37, and 44; or iii) otherwise comply with the Schedule that is forth in Attachment 2 to the SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 400	1st through 14th day
\$ 750	15th through 30th day
\$ 1000	31st day and beyond

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86 of Section XXI (COVENANTS NOT TO SUE BY PLAINTIFF), the Work Parties shall be liable for a stipulated penalty in the amount of \$700,000.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Work Parties of any deficiency; (2) with respect to a decision by the Regional Judicial Officer under Paragraph 69.b. or 70.a. of Section XIX (DISPUTE RESOLUTION), during the period, if any, beginning on the 21st day after the date that the Work Parties' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (DISPUTE RESOLUTION), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

77. Following EPA's determination that the Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give the Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

78. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless the Settling Defendants invoke the Dispute Resolution procedures under Section XIX (DISPUTE RESOLUTION). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Hazardous Substance Superfund, EPA Region VII, P.O. Box 360748M Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #07/S2, the DOJ Case Number 90-11-2-1112/2, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the EPA Project Coordinator and Regional Financial Management Officer, as provided in Section XXVI (Notices and Submissions).

79. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

80. Penalties shall continue to accrue as provided in Paragraph 76 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, the Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the Settling Defendants to the extent that they prevail.

81. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

82. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(I) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

83. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFF

84. The following covenants not to sue extend only to the Settling Defendants and the Settling Federal Agency and do not extend to any other person.

a. In consideration of the actions that will be performed and the payments that will be made by the Work Parties under the terms of the Consent Decree, and except as specifically provided in Paragraph 85 of this Section, the United States covenants not to sue or to take administrative action against the Work Parties, pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 50.a. and 51.a. of Section XVI (PAYMENTS FOR

RESPONSE COSTS). These covenants not to sue are conditioned upon the satisfactory performance by the Work Parties of their obligations under this Consent Decree.

b. In consideration of the payments that will be made by the Cash-Out Parties under the terms of this Consent Decree, and except as specifically provided for in Paragraph 85, EPA covenants not to sue or to take administrative action against the Cash-Out Parties pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Cost and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 54.a. and 54.b. of Section XVI (PAYMENTS FOR RESPONSE COSTS). These covenants not to sue are conditioned upon the satisfactory performance by the Cash-Out Parties of their obligations under this Consent Decree.

c. In consideration of the payments that will be made by the Settling Federal Agency under the terms of this Consent Decree, and except as specifically provided for in Paragraph 85, EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Cost and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 56.a. of Section XVI (PAYMENTS FOR RESPONSE COSTS). These covenants not to sue are conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Consent Decree.

85. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and the Settling Federal Agency with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and the Settling Federal Agency with respect to, and including but not limited to, the following:

a. claims based on a failure by Settling Defendants or the Settling Federal Agency to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' or the Settling Federal Agency's ownership or operation of any part of the Site, or upon the Settling Defendants' or the Settling Federal Agency's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with any part of the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants and the Settling Federal Agency;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of Federal or state law which occur during or after implementation of the Remedial Action;

g. liability of the Work Parties (and not the Cash-Out Parties or the Settling Federal Agency), prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to prevent human ingestion of ground water that exceeds Health-Based Levels, but that cannot be required pursuant to Paragraph 12 (Modification of the SOW or Related Work Plans);

h. liability for other operable units at the Site, other than OU19;

i. liability for costs that the United States will incur related to the Area-Wide OU 19 but are not within the definition of Future Response Costs; and

j. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

86. Work Takeover In the event EPA determines that the Work Parties have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. The Work Parties may invoke the procedures set forth in Section XIX (DISPUTE RESOLUTION), Paragraph 69, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Work Parties shall pay pursuant to Section XVI (PAYMENT FOR RESPONSE COSTS).

87. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCY

88. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 90, and with regard to the Settling Federal Agency, the Settling Federal Agency's payment as required under Paragraphs 56 and 57, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions, and Past and Future Response Costs as defined in this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 96 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 85.b. - d. or 85.g. - j., but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

89. Covenant by the Settling Federal Agency. The Settling Federal Agency hereby agrees not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Work, past response actions, and Past and Future Response Costs as defined in this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

90. The Settling Defendants reserve, and this Consent Decree is without prejudice to claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a Federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. The Settling Defendants reserve, and this Consent Decree is without prejudice to contribution claims against the Settling Federal Agency in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraphs 85.b.- d. or 85.h.- j. of Section XXII (COVENANTS BY PLAINTIFF), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

91. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

92. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

93. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agency are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. Matters addressed means the Work required by this Consent Decree and the Past and Future Response Costs, as defined herein.

94. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

95. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days after service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

96. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants set forth in Section XXI (COVENANTS BY PLAINTIFF).

XXIV. ACCESS TO INFORMATION

97. The Work Parties shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the Work required by this Consent Decree and the Past and Future Response Costs, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Work Parties shall also make available to EPA, for purposes of investigation,

information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

98. Business Confidential and Privileged Documents.

a. The Work Parties may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Work Parties that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to the Work Parties.

b. The Work Parties may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Work Parties assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Work Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

99. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

100. Until six years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 47.b. of Section XIV (CERTIFICATION OF COMPLETION) each Work Party shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that the Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Work Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided,

however, that each Work Party (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

101. At the conclusion of this document retention period, the Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, the Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

102. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

103. The United States acknowledges that the Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. § § 9604(e) and 9622(e).

XXVI. NOTICES AND SUBMISSIONS

104. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agency, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1112/2

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-616644

As to EPA:

Director, Superfund Division
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Paul Doherty, EPA Project Coordinator
U. S. EPA, Region VII
901 North 5th Street
Kansas City, Kansas 66101

:

John Anderson, EPA Regional Financial
Management Officer
U. S. EPA, Region VII
901 North 5th Street
Kansas City, Kansas 66101

As to the State:

Ed Southwick
Nebraska Department of Environmental Quality
1200 N Street Suite 400
Lincoln, Nebraska 68509-8922

As to the Work Parties:

David L. Wacker, P.E.
City Engineer
City Hall
220 N. Hastings Avenue
Hastings, Nebraska 68901

Michael Sullivan
City Attorney - Environmental
220 North Hastings Avenue
Hastings, Nebraska 68901

XXVII. EFFECTIVE DATE

105. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

106. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (DISPUTE RESOLUTION) hereof.

XXIX. APPENDICES

107. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the Cost Summary/SCORPIOS Report.

“Appendix D” is the map of the Site.

XXX. COMMUNITY RELATIONS

108. The Work Parties shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Work Parties under the Plan. The Work Parties shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, the Work Parties shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

109. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Work Parties. All such modifications shall be made in writing.

110. Except as provided in Paragraph 12 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the Work Parties and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Work Parties.

111. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

112. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree, as lodged, without further notice.

113. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

114. Each undersigned representative of a Settling Defendant to this Consent Decree and the Deputy Section Chief for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

115. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

116. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

117. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

118. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

119. Upon execution of this document, the original Consent Decree shall be returned to the United States Attorney's Office and a copy of the Consent Decree shall be maintained in the Clerk's Office.

SO ORDERED THIS ____ DAY OF _____

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

Catherine R. McCabe, Esq.
Deputy Section Chief
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
NY Bar 1264779
(202)514-1447

Date

Kathryn Macdonald, Esq.
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
New York Bar Registration No. 2597037
(202)353-7397

Date

Lois Godfrey Wye, Esq.
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
D.C. Bar 429674
(202)514-9277

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

Date

MICHAEL G. HEAVICAN
U.S. Attorney
District of Nebraska
Laurie A. Kelly, Esq.
Assistant United States Attorney
1620 Dodge Street, Suite 1400
Omaha, NE 68902-1288
MA Bar 557575
(402)661-3700

Date

James B. Gulliford
Regional Administrator
U.S. EPA, Region VII
901 N. Fifth Street
Kansas City, Kansas 66101
(913)551-7006

Date

Audrey B. Asher, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region VII
901 N. Fifth Street
Kansas City, Kansas 66101
MO Bar 31246
(913)551-7255

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR MORRISON ENTERPRISES

Date

Signature: _____
Name (print): _____
Title: _____
Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

*

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

Date

MICHAEL G. HEAVICAN
U.S. Attorney
District of Nebraska
Laurie A. Kelly, Esq.
Assistant United States Attorney
1620 Dodge Street, Suite 1400
Omaha, NE 68902-1288
MA Bar 557575

Date

James B. Gulliford
Regional Administrator
U.S. EPA, Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

6/20/03
Date

Audrey B. Asher, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region VII
901 N. Fifth Street
Kansas City, Kansas 66101
MO Bar 31246

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR CONCRETE INDUSTRIES, INC.

06-16-03
Date

Signature: _____
Name (print): Robert A. Nordquist _____
Title: President _____
Address: 6300 Cornhusker Highway _____
P.O. Box 29529 _____
Lincoln, NE 68529 _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Shannon L. Doering _____
Title: General Counsel _____
Address: 1815 Y Street _____
P.O. Box 80268 _____
Lincoln, NE 68501 _____
Ph. Number: _____

✓
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR THE CITY OF HASTINGS

June 9, 2003
Date

Signature _____
Name (print): Richard J. Sheehy
Title: Mayor
Address: City Hall
220 N. Hastings Ave.
Hastings, NE 68901

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Richard J. Sheehy
Title: Mayor
Address: 220 N. Hastings Ave.
City Hall
Hastings, NE 68901
Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR COOPERATIVE PRODUCERS, INC.

June 9, 2003

Date

Signature: _____

Name (print): Robert Boyd _____

Title: Chairman _____

Address: P.O. Box 2028 _____

Hastings, NE 68902 _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Theodore L. Kessner _____

Title: Attorney _____

Address: Crosby Guenzel LLP _____

134 S. 13th St., Suite 400 _____

Lincoln, NE 68508 _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR DESCO CORPORATION

5/9/03
Date

Signature: _____
Name (print): Roger D. Bailey
Title: CFO
Address: Desco Corporation
150 E. Campus View Blvd.
Suite 250
Columbus, OH 43235

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Lawrence A. Demase, Esq.
Title: Attorney for Desco Corporation
Address: Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR DRAVO CORPORATION

5/9/03
Date

Signature: _____
Name (print): Kevin J. Whyte
Title: Vice President General Counsel
Address: c/o Carmeuse North America
11 Stanwix St. - 11th Floor
Pittsburgh, PA 15222

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Lawrence A. Demase, Esq.
Title: Attorney for Dravo Corp.
Address: Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR DUTTON-LAINSON COMPANY

June , 2003
Date

Signature: _____
Name (print): Gayle E. McClure
Title: Senior Vice-President
Address: 451 West 2nd Street
Hastings, NE 68901

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Charles R. Hermes
Title: President
Address: 451 West 2nd Street
Hastings, NE 68901

Ph. Number: _____

(Area Wide Consent Decree)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. City of Hastings, et al.* relating to the Hastings Ground Water Contamination Site Superfund Site.

FOR MORRISON ENTERPRISES

June 13, 2003
Date

Signature: _____
Name (print): KENNETH MORRISON
Title: MANAGING PARTNER
Address: BOX 609
HASTINGS NEBRASKA 68901

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Anna L. Stehlik
Title: R. Horney
Address: 3303 West 12th Street
P.O. Box 609
Hastings NE 68902
Ph. Number: _____